

COMMONWEALTH OF KENTUCKY
LAWRENCE CIRCUIT COURT
DIVISION NO. II

COPY

ACTION NO. 97-CI-00264

EASTERN CRANE, INC.

PLAINTIFF

VS: DEPOSITION ON BEHALF OF
PLAINTIFF, OF THE WITNESS:

MITCH THOMAS

KENTUCKY POWER COMPANY
and MITCH THOMAS

DEFENDANTS

The DEPOSITION ON BEHALF OF
PLAINTIFF, OF THE WITNESS, MITCH THOMAS, was taken
before Anne Lewis, Notary Public, in and for the
State of Kentucky at Large, on August 5, 1999, at
the Law Offices of Honorable Wendell Roberts, 1505
Carter Avenue, Suite 200, Ashland, Kentucky,
commencing at the approximate hour of 9:30 a.m..

Said deposition was taken pursuant
to Notice, to be used for the purpose of evidence
on behalf of plaintiff in the trial of the above-
styled action, and for any and all purposes
permitted by the Rules of Civil Procedure.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE
Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

I

Rec 8/26/99

APPEARANCES

FOR PLAINTIFF

HON. MARRS ALLEN MAY
234 SECOND STREET
P.O. BOX 1465
PIKEVILLE, KY 41502

FOR DEFENDANTS

HON. WENDELL S. ROBERTS
1505 CARTER AVENUE
SUITE 2000
P.O. BOX 70
ASHLAND, KY 41105-0070

HON. ANTHONY J. SWANECK
1 RIVERSIDE PLAZA
COLUMBUS, OHIO 43215-2373

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

I.N.D.E.X.

CAPTION	1
APPEARANCES	2
INDEX	3
WITNESS:	
MITCH THOMAS	
CROSS-EXAMINATION	
By Mr. May	1-62
CERTIFICATE63

SISTERS' REPORTING/VIDEOGRAPHY SERVICE
Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 THEREUPON, THE WITNESS, MITCH
2 THOMAS, BEING DULY SWORN, TESTIFIED AS FOLLOWS,
3 TO-WIT:

4
5 CROSS-EXAMINATION

6 BY MR. MAY:

7 Q. 1 State your name, please.

8 A. My name is Mitch Thomas.

9 Q. 2 Where do you live, Mr. Thomas?

10 A. My address is 16928 Trace Road,
11 Rush, 41168--Rush, Kentucky.

12 Q. 3 Where is Rush, Kentucky at?

13 A. It's about 15 miles outside of
14 Ashland.

15 Q. 4 Is it in Lawrence County?

16 A. No, it's not.

17 Q. 5 Mr. Thomas, as you know, I'm Marrs
18 Allen May, and I represent the plaintiff in this
19 action. And today, of course, I'll be asking you
20 questions. Sometimes I don't make my questions
21 too clear. Any time that you don't understand
22 what I'm trying to ask you, just please let me
23 know and I'll try to rephrase the question. Any
24 time you want to stop and talk to your attorney,
25 feel free to do so. It'll be completely informal.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Q. 6 For the purpose of jury selection,
2 let me ask you, do you have any relatives in
3 Lawrence County?

4 A. No, not that I can recall.

5 Q. 7 Have you ever lived in Lawrence
6 County?

7 A. No.

8 Q. 8 What county is Rush in? Boyd?

9 A. Yeah, it's in Boyd.

10 Q. 9 If you would, Mr. Thomas, would you
11 run through your educational background for me and
12 sort of summarize your work history?

13 A. Okay. I graduated high school in
14 1970, from Boyd County High School. I went to the
15 University--well, I went to ACC for two years, and
16 then transferred to the University of Kentucky in
17 Lexington. I finished with a B.S. in mechanical
18 engineering in December of 1974. I started work
19 at Kentucky--what was then Kentucky Power Company
20 in January 1975, at the Big Sandy Power Plant, as
21 an engineer. I held various positions within that
22 company, primarily in a department we call
23 performance department. I finally was promoted to
24 the assistant plant manager. I believe that was
25 in 1987, and then I was promoted to plant manager-

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 --I believe the date was July 1990, and I've been
2 the plant manager since.

3 Q. 10 Now, you mentioned performance
4 department. Would you tell me exactly what the
5 performance department does?

6 A. Typically, at the time--now we don't
7 have a performance department; we re-organized.
8 But at the time that I was back at the performance
9 department, it was primarily the engineering group
10 which did testing of all projects, those sorts of
11 things. We had another group that was our
12 instrument control technicians that took care of
13 the--just what the name would imply, our
14 instruments and controls, and we had a section
15 that was our lab that did coal analysis and water
16 analysis for the units. So those three separate
17 sections comprise what we call the performance
18 department.

19 Q. 11 And in 1987, you became assistant
20 manager?

21 A. That's correct.

22 Q. 12 Would you run through the duties of
23 an assistant manager for me?

24 A. Okay. Primarily, the assistant
25 manager is responsible for the operation and

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 maintenance of the facility. He reports to a
2 plant manager--at the time, we reported to the
3 plant manager, who was ultimately responsible for
4 the operation, but the assistant manager primarily
5 focused his responsibilities on operating and
6 maintaining the plant. That would be it in a nut
7 shell, I'd say.

8 Q. 13 So the assistant manager would be
9 primarily responsible for the day-to-day
10 operations of the plant?

11 A. Pretty much, yes.

12 Q. 14 And the plant manager, then, would
13 oversee the assistant manager and then deal with
14 matters that encompassed activities outside the
15 range and the plane itself, including the plant?

16 A. The plant manager would, as you
17 said, oversee what the assistant manager did, but
18 there was also areas in human resources and--and
19 various activities outside the plant, as you
20 mentioned, that the plant manager would be
21 involved with in addition, as a partner with the
22 assistant.

23 Q. 15 Let me ask you this, since this will
24 be one of the areas I'll be getting into later.
25 Who would be primarily responsible for the day-to-

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 day dealings with the union?

2 A. With which union?

3 Q. 16 I was under the understanding there

4 was only one, but the one that Mr. Ken Davis was

5 the representative for.

6 A. We really didn't have a lot of day-

7 to-day activities that--with the building and

8 trades union. The only time we would have

9 activities involving those would be during unit

10 outages.

11 Q. 17 Now, I understand that is one of the

12 elements involved in this matter, too. Would you

13 explain to me what a unit outage is and how the

14 union would come into play in such a situation?

15 A. Okay. From time to time it is

16 necessary to perform corrective or preventative

17 maintenance on equipment, similar to what you

18 would do with your automobile. Every now and then

19 you have to take a unit out of service to do

20 things that will improve the reliability or

21 availability of that particular unit. Those units

22 operate--we've got two units at Big Sandy that

23 operate as stand-alone units, and, by that, I mean

24 each unit can run independently of the other and

25 has its own auxiliary systems and own ties to the

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 transmission system and one unit can be out while
2 the other unit continues to run. And occasionally
3 we have times when, again, we have to bring the
4 units out of service to repair. We call that a
5 general boiler inspection and repair, although the
6 repairs go beyond the boiler many times. At that
7 time--those times, when the unit--a unit outage
8 occurs of the nature that I'm talking about, our
9 labor force at the plant is not sufficient to take
10 care of the work--all the work that needs to get
11 done within a finite short--relatively short
12 period of time. Typically, outages--I don't
13 recall what the outages were running at the time--
14 the lengths of outages were running at the time of
15 this incident, but let's say they run between--
16 somewhere between six and ten weeks, and there's
17 a lot of work that has to be done in a relatively
18 short period of time. So typically, we use the
19 building and trade union, which is the one I think
20 you were referring to there. Those--the various
21 crafts in that are boiler makers, pipefitters,
22 operators, laborers, millwrights are the five that
23 I can recall. We use the building and trades
24 union as a labor pool for us to bring people in to
25 get this lot of work done in a short period of

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 time.

2 Q. 18 Now, what type of work would that

3 be?

4 A. It varies. I don't recall

5 specifically all the work that was being done

6 during this outage that--where Mr. Leguire was

7 here. But I do remember that involved multiple

8 crafts, and, by that I mean laborers, boiler

9 makers, pipefitters, probably electricians. That

10 sort of thing.

11 Q. 19 It would have nothing to do with the

12 dredging and cleaning of these ponds, would it?

13 A. The dredging and cleaning of the

14 ponds could certainly be done independently of

15 this unit outage, yes.

16 Q. 20 And, again, you'll have to forgive

17 my ignorance. As I told Mr. England yesterday,

18 I'm trying to educate myself as to how these

19 plants operate. But as I go by the plant there,

20 I notice what I considered or thought to be two

21 cooling tower things. Am I right in assuming

22 those are cooling towers?

23 A. There are two cooling towers.

24 Q. 21 And, then, are there two separate

25 smoke stacks, too?

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 A. Just one smoke stack.

2 Q. 22 When I go by, I notice out of the

3 cooling towers there's steam coming up out of

4 them.

5 A. Water vapor, yes.

6 Q. 23 Water vapor. Okay.

7 A. Whatever.

8 Q. 24 Anyway, something is coming up out

9 of them.

10 A. I'm glad you didn't call it

11 pollution.

12 Q. 25 Anyway, I guess it would be a safe

13 assumption upon my part to assume that when there

14 is water vapor coming out of the towers, they're

15 in operation?

16 A. In general, yes. They're either in

17 operation or on their way toward operation or just

18 have stopped operation. So, in general, if water

19 vapor is coming out of it, they're in operation.

20 Q. 26 They're in operation. And if there

21 would be an outage and it would be shut down, then

22 there would not be any water vapor coming out of

23 the tower?

24 A. That would be--that would be a fair

25 assessment.

1 Q. 27 Now, moving on to another area, as
2 I understand it, Mr. Lequire's company, Eastern
3 Crane, had done prior work for AEP in 1990. Is
4 that right?

5 A. Yes, I believe it is.

6 Q. 28 Do you recall what the type of work
7 Mr. Lequire's company had performed in 1990?

8 A. As I recall, we used him on one or
9 two occasions to clean out our--he had a long
10 stick--what we call a long stick backhoe, which is
11 a long reach--has a capability of reaching far out
12 into a pond or a ditch line or whatever. We had
13 him clean a couple of our coal pile run-off ponds,
14 as I recall. I think that was what he did.

15 Q. 29 Now, then again in 1993, apparently
16 there was another situation that you needed the
17 services of a company like Mr. Lequire's, and, as
18 I understand from Mr. England, Mr. Lequire was
19 invited to bid upon that. Do you recall the
20 circumstances of that occasion?

21 A. I recall some of the circumstances,
22 yeah.

23 Q. 30 Would you tell us what you recall in
24 regard to that?

25 A. I knew that we were doing some work

1 in the bottom ash pond area and that we required
2 the--we felt we required the services of the long
3 stick backhoe operation, and we knew we had had
4 experience with him. He had done the work for us
5 before.

6 Q. 31 Had the work been done
7 satisfactorily before?

8 A. Yes.

9 Q. 32 Now, who would have been the person
10 in the plant facility there that would have been
11 primarily in charge of assessing the situation and
12 determining the need for this work to be done and
13 working with the prospective contractors in regard
14 to it?

15 A. That probably would have either been
16 Steve Porter or Bill England, in this case. One
17 or the other. I--I don't know which. Probably
18 Steve more than Bill.

19 Q. 33 What is Steve Porter's position with
20 the company or was at that time, I should say.

21 A. He was an engineer. I think he
22 started in the performance department at that--he
23 was an engineer in the performance department.

24 Q. 34 And in a situation of this nature,
25 would they report to you their needs and you make

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 a decision as to whether or not contractors were
2 contacted, or would that be a decision made at the
3 level they were at?

4 A. They would typically do that,
5 although I--I would approve any contract that was
6 set up. Typically, I got involved with it from
7 the standpoint of the paperwork side.

8 Q. 35 How would you go about determining
9 the need and submitting a proposal to prospective
10 bidders in a situation like that?

11 MR. ROBERTS: In general terms or
12 this time or--

13 Q. 36 Well, let's use this as an example.
14 What would be the procedure in an instance like
15 this, as to what was determined to be needed, how
16 a proposal was drawn up, and how a submission and
17 a determination as to who would be accepted was
18 made?

19 A. Typically, once it's determined that
20 you have a need for a contractor, you contact
21 several. In this case, I think we contacted three
22 companies that we knew could supply the service
23 that we desired and asked them to submit bids.
24 Typically, we will ask these three to submit bids,
25 and, on occasion, it would be fewer, and on

1 occasion, it would be more. Typically, it would
2 be around three.

3 Q. 37 Now, Mr. England testified
4 yesterday, as you know, and Mr. England was kind
5 enough to--to try to explain to me the operations
6 of these ponds there. And, as I understand it,
7 and you correct me when I get off base here, you
8 have, first, two ponds which were referred to as
9 the north and the south ponds. It's my
10 understanding that the ash would be brought from
11 wherever the furnaces were that consumed the coal--
12 --it would be brought to these two ponds, the north
13 and south ponds, where it would be deposited; that
14 below the north and south pond were located two
15 settling ponds where the overflow from the north
16 and south ponds would carry off the lighter ash
17 material. The heavy ash material settling in the
18 north and south ponds, the overflow bringing the
19 lighter ash material down to the two lower
20 settling ponds, and then, beyond the two lower
21 settling ponds to what was called a recirculating
22 pond, which I assume was primarily water, mostly,
23 coming out of those two into the recirculating
24 pond, which, then there were two alternatives:
25 One, to bring the water back to the plant and

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 reuse it, or, the other one, to take it across
2 into a disposal area. Would that be a fair
3 characterization of the process?

4 A. It's--yeah, it's pretty close. The
5 north and south bottom ash ponds are--they're set
6 up to be essentially two systems to where you can
7 use one or the other. You typically will not use
8 both at the same time. You use--when you're
9 pumping your ash into the north system, the south
10 system it out of service. That way, you can clean
11 or do any maintenance type work on the ponds
12 themselves.

13 Q. 38 And I would assume that's where the
14 dredging part comes in and where you would need to
15 hire a contractor, is that when one of these ponds
16 is shut down, you use someone to clean that one,
17 or, in this particular instance, I understand it
18 was to clean the settling ponds and the
19 recirculating ponds. Is that right?

20 A. That's my understanding, yes.

21 Q. 39 Now, would you have been supplied
22 the documentation--you mentioned that you would
23 have been primarily concerned with the paperwork
24 on it. Would you have been supplied with the
25 documentation in this particular instance?

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 A. What documentation?

2 Q. 40 The first--and this is an area I

3 need to get into. Apparently, and you correct me

4 again if I'm wrong, that there was determined by

5 some method to be approximately 26,000 cubic yards

6 of material, ash, that needed to be removed from

7 the north pond. Am I right in that--

8 A. That's--as I recall, yeah, there

9 was--there was some amount of ash in that--in that

10 vicinity that was required--that was estimated

11 that was in there, yes.

12 Q. 41 Now, what I really need to get into

13 is who and how was it determined that there was

14 approximately 26,000 cubic yards of material to be

15 removed?

16 A. I'm probably not really the guy to

17 answer that question. I can give you how it would

18 generally be done.

19 Q. 42 Okay. That's fine. I'm really just

20 needing to understand how the process worked.

21 A. Okay. Typically, when you're in

22 these particular ponds, the--the material that

23 you're wanting to remove it below the water line.

24 Okay? So you can't see it necessarily, so you

25 have to depend on instrumentation or some means of

1 telling you that this is the level of the ash.
2 Typically, it will be--that level would be
3 determined by something--in this case, for
4 example, like a depth finder similar to what you
5 would use on your boat or maybe exactly what you
6 might use on your boat, you know. And there are
7 profiles--there are profiles that are taken of the
8 pond--okay--and from that--before removal profile
9 and then after removal profile, you can determine
10 a volume that is removed, and that would be a
11 general way that this was determined in this
12 particular case.

13 Q. 43 Let me ask you if this would be a
14 similar method. You have to understand I'm--my
15 litigation has been primarily with the coal
16 industry. And what we do, we take cross sections
17 with--like you would take a pond, or, in the case
18 of a coal seam, you would take a coal seam and you
19 would run cross sections on it, and I would assume
20 that--would it be a similar process in determining
21 this?

22 A. What you're calling a cross section,
23 I believe, is what I'm calling a profile. Every
24 so often we get a profile that will be different
25 and--

1 Q. 44 Right. You set a standard of feet--
2 every, say, ten feet or whatever you set your
3 standard at, and you will take a cross section
4 across, and you will then take those over the area
5 that you wish and then compile them and average
6 them as to determine what--

7 A. That, in general, would be a fair
8 assessment of how it's done. In this particular
9 case, like I said, I--I wasn't involved at all
10 with the survey, and, really, I'm not the guy to
11 ask about how volumes were determined in this
12 particular case.

13 MR. MAY: Let's go off the record a
14 second.

15 (SHORT BREAK) .

16 Q. 45 BY MR. MAY (Continuing): Now, did
17 you see any of the documentation in regard to
18 determining this 26,000 cubic yards of material to
19 be moved?

20 A. Documentation, you mean--

21 Q. 56 The manner in which they computed
22 it, the figures where they made these
23 computations?

24 A. The only thing I saw was a document
25 that--and it's after the fact--the document of the

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 amount that was removed.

2 Q. 57 You did not see any documentation at
3 the front end of it where they arrived at the
4 26,000 cubic yards?

5 A. I don't recall that documentation.

6 Q. 58 Let me present to you a document and
7 ask you if you saw this document, which is a
8 proposal by Mr. Lequire's company.

9 (WITNESS REVIEWS DOCUMENT) .

10 A. I--I have seen this document.

11 Q. 59 Now, in this document, it states
12 that Mr. Lequire proposes to furnish certain
13 equipment which indicates one cutterhead dredge,
14 one six--is that six-inch trash pump, a two-
15 thousand foot pipe, one light plant mobilization.
16 Those pieces of equipment, were those--since we
17 don't, apparently, have a copy of the
18 specifications itself--were those pieces of
19 equipment in compliance with the request for bids
20 submitted by the power company to the prospective
21 contractors?

22 A. This would be the type of equipment
23 that you would typically use to do a dredging job
24 similar to what he was getting ready to do, if
25 that's what you're asking.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Q. 60 Okay. And if Mr. Lequire had not
2 proposed to supply the necessary equipment, you
3 would not have accepted his bid, would you?
4 A. I don't understand exactly the
5 question.
6 Q. 61 Okay. If Mr. Lequire's proposal, in
7 this instance, the document that we're looking at-
8 -if that had not met the needs of the job that you
9 had for him to do, you would not have accepted the
10 bid, would you?
11 A. Well, we ask--we ask for companies
12 to submit bids to dredge the pond, so if a company
13 submitted a bid that did not have the equipment on
14 it to do that job, we would question if they
15 really understood the scope of what we were
16 asking--what we were after. So in that regard, we
17 would have a problem with their bid, yes.
18 Q. 62 But in this particular instance, you
19 all apparently felt that this equipment was
20 sufficient to perform the job or you wouldn't have
21 accepted the bid?
22 A. That would be a fair statement.
23 MR. MAY: May we introduce this
24 document as Exhibit One to the deposition?
25 MR. ROBERTS: For purposes of

1 identification only at this time. Right?
2 Correct?

3 MR. MAY: Sure; uh-huh.

4 Q. 63 Now, I want to present to you
5 another document, Mr. Thomas, and ask you if you
6 recognize that document.

7 (WITNESS REVIEWS DOCUMENT).

8 A. Yes.

9 Q. 64 Would you explain to me what that
10 document is?

11 A. As I explained earlier, typically
12 what we will do whenever there is any job that we
13 have to do, we will go out and get bids. The
14 accounting process that we have requires that we
15 get at least three, unless there are some
16 extenuating circumstances. In this case--and this
17 document would have accompanied the service order
18 that I was being requested to sign. That's Steve
19 Porter or whoever indicating to me that they got
20 three bids or attempted to get three bids for this
21 particular work. It indicates that the bids are
22 attached--at least, two of the bids are attached,
23 and that one person that they contacted chose not
24 to submit or did not respond to the bid.

25 Q. 65 Would Exhibit One have been the bid

1 of Mr. Lequire that would have been attached to
2 this? If you want to look at it again.

3 A. Probably. I--I'd say that would be
4 a fair statement.

5 Q. 66 And I notice that this document
6 states that it was copied to M.H. Thomas, and that
7 is you?

8 A. Yes. That's correct.

9 MR. MAY: May we introduce this as
10 Exhibit Two to the deposition?

11 MR. ROBERTS: For the record, my copy
12 is a little bit--

13 MR. MAY: Mine is not very plain.
14 These were supplied to us, and if you want to
15 supply to the reporter a better copy, I certainly
16 have no objection.

17 MR. ROBERTS: You and I can talk
18 about that after the fact, but we know what the
19 document is.

20 Q. 67 Right; sure. And, in fact, the
21 document I'm getting ready to present you is even
22 more indistinct than that. But I present to you
23 another document which, you mentioned a service
24 order, and let me ask you if that is the service
25 order that would have been issued pursuant to this

1 bid process.

2 A. Yes, it would.

3 Q. 68 Now, in this service order, it
4 states that "provide manpower and necessary
5 equipment to clean three lower bottom ash settling
6 ponds per attached bid. Total amount will be
7 determined after survey from EAEP Lab." If you
8 would, explain to me what the meaning of that is,
9 Mr. Thomas.

10 A. All right. Describes in general
11 terms the work to be performed, which is to
12 provide the manpower necessary to--and equipment
13 necessary to remove the sludge, if you will, from
14 the bottom ash--the settling ponds. It describes
15 that there are bids attached for that work. It
16 also describes that--what you read, describes the
17 method of payment that would be--at least, the
18 final amount that would be paid for would be
19 determined by the American Electric Power lab.

20 Q. 69 Now, I guess what I need for you to
21 do, if you would, Mr. Thomas, is explain to me a
22 little more specifically what it means when it
23 says, "Total amount will be determined after
24 survey from EAEP Lab." I think we've established
25 that there had already been some type of

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 determination that there was 26,000 cubic yards of
2 material to be removed. Now, if you would,
3 explain to me the meaning of that particular
4 sentence.

5 MR. WENDELL: For the record, I think
6 the prior reference was that that was an
7 approximation.

8 MR. MAY: Right. Go ahead.

9 A. Okay. We asked our folks that bid
10 on the job to submit a bid on a cost per yard
11 remove basis, and you'll notice on this contract
12 that it says "unit price" up at the top. So we--
13 our intent in this contract was to pay on a--on a
14 cost per yard of material removed, similar to how
15 we had paid in all the other jobs that Johnny had
16 done--Mr. Lequire had done, which was on a cost
17 per yard removed basis. So this--this sentence
18 that says, "Total amount to be determined after
19 survey," is to me indicating that the exact dollar
20 number amount of that will be paid to him will be
21 determined by the amount of material that's
22 removed.

23 Q. 70 So there was a determination made
24 first, I assume, that there were 26,000 cubic
25 yards, approximately, to be removed?

1 A. Right.

2 Q. 71 Then, at the end of the job, you

3 would go back and make another survey--

4 A. To get the exact amount.

5 Q. 72 --to get the exact amount. So what

6 you would do, then, the original survey would show

7 the material at one level; then you would come

8 back after the job, re-run the survey, and see

9 what the level was at that point; then attempt to

10 calculate how much material had been removed?

11 A. That's correct. A whole lot of why

12 the--well, the reason that an estimate was

13 necessary and the reason that--at least, part of

14 the reason that that estimate was necessary is to

15 determine the type of service order that would be--

16 --that would be written. The spending levels that

17 I have approval for go up so far, and then I have

18 to get approval for them, and so we have to

19 estimate the amount to determine that, and so that

20 26,000 figure or whatever it was, was an estimate

21 that was used to determine what level of service

22 order we would need, for accounting purposes.

23 Q. 73 But in the process you all were

24 using, it would be absolutely necessary, wouldn't

25 it, that at the outset you make a determination of

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

--Mitch Thomas--

1 the level of the material, and, then at the
2 completion, you make a determination of the level
3 of the material; then take the difference to
4 determine the amount removed?

5 A. Again, that would be a fair
6 assessment, yes.

7 MR. MAY: That's what I'm trying to
8 find out. Okay. Now, I don't believe we have
9 introduced that yet, and we would, at this time,
10 ask that this be introduced as Exhibit Number
11 Three to Mr. Thomas's deposition.

12 MR. ROBERTS: No objection, for
13 identification purposes.

14 Q. 74 Now, I assume that Mr. Lequire,
15 after the service order was entered, and I believe
16 that service order was designated B-8511. Is that
17 right?

18 A. Yes.

19 Q. 75 This, I assume--we could
20 characterize as the contract with Mr. Lequire to
21 perform this work. Would that be a fair
22 characterization?

23 A. This is a part of it, I think. The
24 company would look at this with the terms--as a
25 terms agreement portion.

1 Q. 76 Would there be some other document
2 that I'm not aware of that would be encompassed
3 within what I would characterize as a contract?

4 A. Well, again, I'm not--whenever we
5 send out a service order bid, we also send out a
6 terms and conditions document.

7 Q. 77 Do you have a copy of that?
8 Apparently we do not have it.

9 MR. ROBERTS: That was provided, and
10 I gave you the '91 version yesterday--

11 MR. MAY: Oh, you're talking about
12 the--oh, okay. You're talking about that book.
13 You're talking about this document right here?

14 A. That would be right.

15 MR. MAY: But other than this
16 document, and I don't want to introduce it--well,
17 if you would supply a copy for the purpose of
18 introducing it as an exhibit, Wendell, because I
19 don't want to surrender my copy.

20 Q. 78 I'll present you a document which
21 was supplied to me by your attorney, and I believe
22 he will confirm that, and ask you if that is the
23 document--although I understand there is some
24 possible date changes--essentially the same
25 contract?

1 A. We've previously provided you with
2 one bearing the date of 1988, and most recently
3 learned of--I learned of this 1991, and provided
4 you that.

5 Q. 79 But that would be the document that
6 you're referring to?

7 A. That would be right. And both of
8 these together, I would--

9 Q. 80 Would constitute--

10 A. --constitute the contract.

11 MR. MAY: And if we might introduce
12 a copy that Wendell was going to supply to you, as
13 Exhibit Four.

14 Q. 81 Now, after Mr. Lequire began working
15 there on removing the material from the settling
16 ponds, did some event occur involving the
17 releasing of some of the material from the upper
18 north or south pond of heavy material down into
19 the settling ponds that he was cleaning?

20 A. I don't know a lot of details about
21 that, but it's my understanding that some material
22 from one of the ponds--some of the heavier
23 material did get down into the--one of the
24 settling ponds as we were draining it.

25 Q. 82 Would you explain to me what you

1 understood to have occurred there?

2 A. Well, not much more than that.
3 Just, as we were in the process of removing the
4 water from the pond that was getting ready to be
5 cleaned, some heavier materials went through the--
6 went out into this other pond.

7 Q. 83 You don't know how that occurred?

8 A. Well, there's a drainage pipe that
9 connects the bottom ash pond and the settling pond
10 that he was getting ready to clean, and that de-
11 watering operation--I think at the time and I'm
12 trying to recall back several years, but, as I
13 recall, I think that our thought was that the one
14 pond had filled up a little more than we typically
15 would have, and the heavier material went over
16 into this pond. It happened either that way or a
17 problem with the drainage pipe, but either way, it
18 doesn't really matter how it happened. There was
19 some heavier material that got out.

20 Q. 84 Now, I guess I need to go back a
21 little bit. In the process of cleaning the
22 settling ponds by Mr. Lequire, was the method or
23 way in which this was to be accomplished was for
24 Mr. Lequire to use his dredge and then the pumps
25 that we have specified to pump this material back

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 over into the north pond?

2 A. I don't remember it that way.

3 Q. 85 Okay. Well--and that's what I'm

4 asking. I'm not trying to--

5 A. I know you're not.

6 Q. 86 Just explain to me what it was.

7 A. Well, our intention for him removing

8 the ash--the sludge out of the ponds was to remove

9 it to a--to a settling area about a mile from the

10 plant. You know, it was not pumping up to one of

11 the other ponds. Now, I think through the process

12 of--and all the trouble they had, at some point in

13 time there was a decision, "Well, let's try

14 pumping it up to this other pond and letting it

15 settle out and see if we can truck it up there."

16 I mean, there was--during this whole process, it

17 took several months, and they tried different

18 things to try to make it work.

19 Q. 87 Then the first plan was to pump it

20 in some pipe to another area?

21 A. Well, our intention with the

22 contract was to have the settling--the material

23 removed from the settling ponds to the area

24 approximately a mile, mile and-a-half from the

25 plant, to behind our fly ash dam. That was the

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 intent of the contract.

2 Q. 88 Did that work?

3 A. It didn't.

4 Q. 89 Did that effort to do that--did it

5 turn out to be practical or feasible to do that?

6 A. Ultimately, it worked, but, like I

7 said, it had several problems. It wasn't this

8 easy, and, as an aside, you know, since then, we

9 have--we have been able dredge it and get that

10 area, a different process.

11 Q. 90 A different process?

12 A. Using dredge but using some other

13 pumps. This was our first attempt, as I recall,

14 of using a dredge to remove that sludge.

15 Q. 91 If we could refer back--In my

16 questioning of Mr. England yesterday, I think I

17 determined, and you correct me again if I am

18 wrong, that the material that would be in the

19 settling ponds would be a lighter material than

20 would have settled out in the north and south

21 pond. Is that right?

22 A. That would be what would be

23 expected, yes, a lighter material.

24 Q. 92 And if, in fact, some of the heavier

25 material from the upper ponds was allowed to go

1 down into the lower ponds, it would create a
2 problem in trying to pump it out.
3 A. It would be more difficult to pump,
4 yes.
5 Q. 93 That's all I needed to know. Now,
6 there was, obviously, a spill there or release, I
7 guess would be a better term, wouldn't it--
8 A. In what--
9 Q. 94 When the heavier material was
10 allowed to in some manner get from the upper ponds
11 to the settling ponds?
12 A. Yeah, there was--the material which
13 wasn't intended to get over into the other pond
14 made it there some way. There was not a release--
15 when I heard "release," I heard "released to the
16 environment." There was not a--it was contained
17 and still within our system.
18 Q. 95 Sure. Now, at some point, then, a
19 determination was made that it was not practical
20 to pump it into this pipe that led to this other
21 area. Would that be true?
22 A. If you're going to start dealing
23 with questions along the details about that part
24 of it, I'm probably not really the guy to answer
25 those, but there was some--I remember some

1 conversation--and I don't remember being a part of
2 it, but I remember them talking about difficulties
3 of that and dealing with that and how they were
4 going to deal with that and so forth.

5 Q. 96 In those conversations that you
6 recall, was there a plan put into action whereby
7 in the north pond a temporary dam would be built
8 across the pond, separating it into an upper and
9 lower section, and Mr. Lequire's company would
10 endeavor to pump this material over into the lower
11 section of that north pond?

12 A. I remember that--again, though, as
13 I said earlier, at some point in time, with all
14 the troubles they were having with this, that
15 they--that they tried to pump it into--they tried
16 to pump the material into one of the--one of the
17 north or south bottom ash ponds to see if the
18 water could get out of it and we could truck it up
19 there. I don't remember whether it was dealing
20 with the heavy stuff that your line of questioning
21 is going down or whether it was dealing with the
22 lighter stuff. I don't recall the details at that
23 point.

24 Q. 97 During--

25 A. I--I'm sorry. Go ahead.

1 Q. 98 No. Go ahead, Mr. Thomas. I'm
2 sorry. I don't want to interrupt you.
3 A. One of the other things I remember
4 is, I remember that we were--we worked out--tried
5 to work out something with Mr. Lequire as far as
6 dealing with that extra ash that came in there.
7 An arrangement, again, by a per yard basis, the
8 details of that I'm not sure. I think we even
9 asked him to use his long stick backhoe to remove
10 some of that at some point. And, again, I was
11 only on the fringes of the conversations, and I
12 didn't really get involved, necessarily, with the
13 details of the action.
14 Q. 99 Let me ask you if you recognize this
15 document, then, since you have mentioned that.
16 A. This would have been what I was
17 talking about--
18 Q. 100 The revision you were talking about?
19 A. The arrangements that we made. We
20 estimated the amount and there is a dollar number
21 on there of an arrangement we made with Mr.
22 Lequire on a per yard basis of removing that ash.
23 MR. MAY: May we introduce this as
24 Exhibit Number Five.
25 Q. 101 And I'll present to you a memorandum

1 which I think indicates a date and indicates you
2 received a copy of it, and I will ask you if that
3 is a memorandum setting out the situation there
4 that resulted in this revision?

5 A. That's what I recall, yeah. The
6 explanation of why the extra was needed, and it
7 was an estimate, as I recall, of how much ash was
8 in there and a price per yard to remove it.

9 MR. MAY: May we introduce that as
10 Exhibit Number Six.

11 MR. ROBERTS: Is that one page or
12 two?

13 MR. MAY: I only have one. Maybe
14 there's two, and, again, I certainly have no
15 objection to supplying the full document.

16 Q. 102 Now, do you remember the placing of
17 the temporary dam there to divide the north and
18 south pond into two sections?

19 A. A temporary dam--I recall them
20 building--mentioning about building a temporary
21 dam, but it would not have been to separate the
22 north and the south--

23 Q. 103 I'm sorry. I--

24 A. It would have been to separate the
25 north pond and build a temporary dike in to keep

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 it from--

2 Q. 104 Right. I misphrased that there, and

3 I apologize to you for that. But the north pond

4 was divided into two sections, with the intent of

5 Mr. Lequire's company pumping out of the settling

6 ponds over into the lower section of the north

7 pond.

8 A. Again, the details of the removal,

9 I'm probably not the guy to ask the question, but

10 I do recall the mention of that and that they were

11 going--they were trying various methods to try to

12 deal with some of this stuff, and this was one of

13 the ones that they tried.

14 Q. 105 Do you recall any conversations

15 about that temporary dam breaking and allowing the

16 material that had backed up behind it to wash down

17 into the settling ponds?

18 A. I don't recall any of that.

19 Q. 106 If such an event happened, would

20 that have again made additional work for Mr.

21 Lequire? If, in fact, the dam broke, allowing

22 material that had been backed up behind it, to

23 wash down into the settling ponds?

24 A. It returned from where it came? Is

25 that what you're asking?

1 MR. MAY: Yes.

2 A. Probably.

3 Q. 107 Do you recall any extra work orders

4 being made in regard to these matters?

5 A. Again, I don't recall the dam

6 breaking and that stuff, so any work orders that

7 resulted as a result of that, I don't recall any.

8 Q. 108 Now, in the memorandum which we have

9 talked about, it mentioned a figure of 700 and--as

10 I recall 799 cubic yards. Do you have any

11 knowledge in regard to the determination of that

12 amount?

13 A. I don't know how that was

14 determined.

15 Q. 109 Do you have any knowledge in fact as

16 to the amount of material that had washed down

17 into the lower pond--settling ponds?

18 A. I don't have any knowledge how much.

19 Q. 110 In the course of past work that had

20 been done there at the plant in hauling away

21 material, had you become familiar with a trucking

22 company called Davis and Burton Trucking Company?

23 A. Yes.

24 Q. 111 Would you explain to me or tell me

25 what your knowledge was in regard to that company,

SISTERS' REPORTING/VIDEOGRAPHY SERVICE
Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 what past experience that you had had with them
2 and who the principals of that company were, if
3 you know?

4 A. I--we had used various companies in
5 the past to do trucking for us, Davis and Burton
6 being one. The two primary contractors we use are
7 Davis and Burton and Goodwin Trucking. We've used
8 them both several times. I don't recall any other
9 companies, actually, that we used that are there
10 local. The principals of Davis and Burton--well,
11 I don't know them personally. I know that one of
12 them was Bill Davis. I think he's deceased now.
13 I don't know the Burton part of Davis and Burton.

14 Q. 112 Let me ask you this. Are you
15 familiar with Ken Davis?

16 A. I know the name and through this, I
17 know his relationship was a business agent--as
18 being the business agent for operators, I think,
19 or a business agent for laborers from the building
20 and trades group that I talked about earlier.

21 Q. 113 Do you know whether he's any
22 relation to Bill Davis of Davis and Burton
23 Trucking?

24 A. I have no personal knowledge of
25 that. Again--

1 Q. 114 If it's just from rumor or whatever
2 you hear--
3 A. --some of the stuff we've been
4 talking about here, I've heard that, you know, he
5 is kin to Bill Davis.
6 Q. 115 So you've at least heard that he is
7 related to Bill Davis of Davis and Burton Trucking
8 Company?
9 A. Yes, I've at least heard that.
10 Q. 116 When the power company there hires
11 a trucking company of this nature to do hauling,
12 removing material, whatever it may be, do you put
13 that out on bids or do you just call the company
14 and tell them to come in and do it?
15 A. Typically, we will--the contractor
16 that we--that we contract for the removal of the
17 material through will be the one who contacts the
18 trucking company.
19 Q. 117 But in an instance where it's the
20 company itself not using a contractor, how would
21 you go about selecting a hauling company?
22 A. It would be a similar method of
23 taking bids and so forth.
24 Q. 118 Do you have any knowledge or did you
25 have any connection of the instances of where

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Davis and Burton Trucking was hired directly by
2 Kentucky Power to do hauling for them?

3 A. I can't recall--just about every
4 time we ever do any hauling, we will go through
5 some other contractor; union boilers, for example.
6 Trans-Ash is an example. And we will ask that
7 contractor to get a trucking company for us. And
8 I can't recall--I can't recall any times that we
9 directly went to Davis and Burton or Goodwin or
10 any trucking company of that nature and said,
11 "We'd like for you to haul this stuff for us."
12 Not to say that that hasn't happened; I just
13 don't--

14 Q. 119 Who would be the person within the
15 company that would normally do something of this
16 nature when it did occur?

17 A. It would be the person that's
18 following the project, would contact the
19 contractors and so forth and arrange to get the
20 work done, whether that would be an engineer at
21 our facility or a person in maintenance from our
22 facility or from some place like that.

23 Q. 120 Do you recall whether or not that
24 previous contractors involved in the cleaning of
25 the ponds in question used Davis and Burton

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Trucking?

2 A. Yeah, I think they have used Davis
3 and Burton Trucking in the past.

4 Q. 121 Do you recall whether or not Mr.
5 Lequire's company initially used Davis and Burton
6 Trucking to haul material?

7 A. I don't know which company that they
8 used initially.

9 Q. 122 Do you have any knowledge of anyone
10 there at the power plant telling the contractors
11 they should use Davis and Burton Trucking?

12 A. No, sir.

13 Q. 123 Was there an instance when Mr.
14 Lequire came to your office in regard to his
15 failure to use Davis and Burton Trucking, and a
16 conversation took place, in which I believe Mr.
17 Porter was present, where Mr. Lequire pointed out
18 the fact that Davis and Burton was charging twice
19 as much as the other trucking companies and that
20 he could not afford to use Davis and Burton
21 Trucking Company?

22 A. There was a time when he--when Mr.
23 Lequire came to my office, and I think Steve
24 Porter was there, as well, wherein--when we
25 discussed a problem that had developed with his

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 not using building and trades folks, and as I
2 recall that conversation, that the problem was
3 brought up by one of the business agents, and I
4 don't recall which business agent, but one of the
5 business agents from the building and trades that
6 saw some of Mr. Lequire's workers doing whatever
7 it was they were doing, and they brought up the
8 issue of--that the work that he was doing should
9 be something that's covered by buildings and
10 trade--should be something that is done by folks
11 within their union, and I recall the conversation--
12 at the time we were in the middle of an outage,
13 and, as I described to you earlier, in an outage,
14 there was approximately--I don't know--somewhere
15 between 350 and 400 craft people there. Mr.
16 Lequire had something in the neighborhood of
17 either two or four people working for him. The
18 situation was such that the building and trades
19 people were saying that Mr. Lequire's folks should
20 be members of their union. I instructed Mr.
21 Lequire that he needed to work it out with the
22 building and trades union to do that. I don't
23 recall any conversation about requiring him to use
24 Davis and Burton Trucking or any specific trucking
25 company.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Q. 124 So you don't recall any mention by
2 Mr. Lequire in regard to Davis and Burton Trucking
3 and the fact that they charged twice as much as
4 the other trucking concerns?
5 A. I do remember our conversation, and
6 in our conversation, we discussed the fact that
7 the union labor was going to increase his cost,
8 and I--as I recall, we agreed to increase the cost
9 per ton that we would pay him for removal, to
10 offset the labor costs.
11 Q. 125 But getting back to the trucks
12 themselves, was Davis and Burton Trucking a member
13 of this union?
14 A. I think Davis and Burton Trucking
15 uses--they must use Teamsters, so--I'm not sure.
16 I assume that they use Teamsters, but I'm not real
17 sure.
18 Q. 126 So what it was--
19 A. I'm not sure if Teamsters are a part
20 of the union.
21 Q. 127 So are you saying that they were
22 demanding that Mr. Lequire's company be union,
23 then?
24 A. "They" being who?
25 Q. 128 Mr. Lequire's company and the local

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 that Mr. Davis was the representative of?

2 A. The building and trades local, of
3 which Mr. Ken Davis, I guess, was a business agent
4 of one portion of it. He was one of the ones that
5 was probably causing, you know, some of the stink,
6 however you'd call it, that there was. There was
7 others. There was--other than Mr. Davis, I don't
8 recall the names, but there were others that were
9 bringing up the fact that they felt that he needed
10 to be a part of the building and trades.

11 Q. 129 Let's go back a little more and talk
12 about this some more. Was the work that Mr.
13 Lequire doing covered by their union contract?

14 A. I don't know. I didn't really think
15 about it one way or the other, but I wasn't in a
16 position with--you have three or four hundred
17 people on the property and trying to get work done
18 in a finite period of time, and Mr. Lequire having
19 two or three people or four, or however many
20 people he had. I wasn't in a position, I didn't
21 feel, to debate that issue, and, typically, I ask
22 the contractors to work it out and--and that's
23 what I did in this case was, I asked the
24 contractors to work it out. I understand that Mr.
25 Lequire went to the United Mine Workers, then, and

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 that apparently was not acceptable to the building
2 and trades folks. I have no personal knowledge--
3 other than what I've said here--I understand that
4 that was not acceptable to them and they had some
5 → problems amongst themselves. I also gave him the
6 option of waiting until after the outage to come
7 back and--and do the work. So we increased his
8 tonnage price to cover the labor--offset in labor,
9 and gave him the option to come back after the
10 outage, if that would be what he would desire.

11 Q. 130 So you did not make any
12 determination that the type of work that Mr.
13 Lequire's company was performing was, in fact,
14 union work?

15 A. No. I--I didn't make the
16 determination personally, no.

17 Q. 131 Do you recall telling Mr. Lequire
18 that unless he joined the union, to shut his
19 operations down and leave the premises?

20 A. I recall telling him that he needed
21 to work it out with the union, and I gave him--and
22 I told him that we would cover his additional
23 labor costs and that we--that if he wanted to wait
24 until after the outage, to stop until after the
25 outage and come back to finish the work, that that

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 was an option for him to do.

2 Q. 132 You didn't, then, characterize that
3 he should stop the work until he joins the union?

4 A. I would characterize it that I told
5 him that he should work it out with the parties
6 involved here.

7 Q. 133 Did you tell him to stop working?

8 A. I don't recall telling him to stop
9 working. I told him that he needed--that they
10 needed to work it out with the--with the union and
11 gave him the option of stopping work and coming
12 back after the outage, as I remember.

13 Q. 134 You say you don't recall. Are you
14 saying, then, it is possible that you told Mr.
15 Lequire to stop working?

16 A. I gave him--gave him, again, the
17 option of stopping the work and coming back after
18 the outage or going to the--you know, the building
19 and trades and working it out with those guys and
20 that we would--we would cover the cost of his
21 labor.

22 Q. 135 So, then, as I understand the
23 alternative was, if he didn't join the union, he
24 was to stop working?

25 MR. ROBERTS: Objection to the

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 characterization--

2 MR. MAY: If those are the two
3 alternatives, either join the union or stop work,
4 I think that would be a fair characterization.

5 MR. ROBERTS: I think he indicated
6 with the idea of returning to finish the job.

7 Q. 136 Let me ask you--Do you recall your
8 attorney writing a letter to the then-attorney for
9 Mr. Lequire, Ms. Fedra Spradlin, wherein it says,
10 as follows--and that letter is dated March 9th,
11 1995. I don't have a complete copy in front of me
12 or I would be glad to introduce it--where it says,
13 "To avoid site labor problems, Eastern Crane was
14 asked by the plant to use union labor or shut down
15 its operation until the outage was complete." Did
16 your attorney misquote the situation there?

17 A. That in general was what I--I stated
18 earlier, that he needed to work it out with the
19 union or stop his operation and come back after
20 the outage was over.

21 Q. 137 Then, I believe my characterization
22 was fair, then, when I said he had either a
23 choice, to join the union or shut down until the
24 outage was over. Would that not be a fair
25 characterization?

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 MR. ROBERTS: Objection. Asked and
2 answered. Go ahead.

3 Q. 138 Is that not a fair characterization?
4 A. Explain--ask the question again.

5 Q. 139 All right, Mr. Thomas. I'm going to
6 drop it there. I think we've had the answer.
7 Now, did Mr. Lequire bring to you a union contract
8 with a United Mine Workers of America?

9 A. He indicated some way. I don't
10 remember a contract. He brought something that
11 indicated to us that he had joined the United
12 Mine--his folks had signed cards with the United
13 Mine Workers of America, yes.

14 Q. 140 Did he resume working then?
15 A. I think so.

16 Q. 141 As a matter of fact, he worked for
17 approximately two weeks before he was called in to
18 the office again by you. Is that not true?

19 A. I don't recall any kind of time
20 frame or whatever. It's possible--

21 Q. 142 Okay. But sometime after he resumed
22 working, he was called into the office by you
23 again. Is that not true?

24 A. I don't know that I called him in.
25 I think that somewhere during this--I don't recall

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 the details behind where he ended up in my office.

2 I don't remember summonsing him to my office or
3 anything like that, if that's what your question--

4 Q. 143 Okay. Some way, then--

5 A. Some way or another, he ended up,
6 yeah, probably in my office again regarding this
7 matter, yes.

8 Q. 144 But, anyway, he was called into your
9 office again or he was in your office again?

10 A. Yes, I would say that he was.

11 Q. 145 He just happened to be in the
12 office. Again, was he informed that he had joined
13 → the wrong union and that he was to stop work again
14 or join Mr. Davis's union?

15 A. As I recall, I told him that he
16 needed to work it out with the building and trades
17 union, and to work--he needed to work the
18 situation out with the building and trades union,
19 that I could not afford--the plant--the facility
20 could not afford to have an operation with two or
21 three or four people affecting an operation with
22 three or four hundred people and that he needed to
23 work it out to the satisfaction of the buildings
24 and trade as to his operation. I would do that
25 similar to any contractor--similar situation that

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 result with any contractor. I would ask them to
2 work it out with the specific entity involved.

3 Q. 146 But was he again given the same
4 alternatives, either join Mr. Davis's union or
5 stop working?

6 A. I don't recall the specifics of the
7 conversation, but I do recall, yeah, I asked him
8 to work it out with the building and trades union.

9 Q. 147 But, again, was he given those same
10 alternatives?

11 A. I would have given him the
12 alternative of--of stopping and coming back after
13 the outage again. I don't recall the specific
14 conversation as it went by. I do recall asking
15 him to work it out with--directing him to work it
16 out with the buildings and trade union.

17 Q. 148 Now, did this constitute a rule with
18 AEP, that any contractor had to be a member of the
19 union to work during outages?

20 A. American Electric Power had entered
21 into an agreement with the building and trades
22 union to perform work inside--when work was being
23 performed on the units, that they would be
24 performed by building and trades union in exchange
25 for what was called a 90 percent agreement, which

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 meant that the folks for the craft labor would
2 receive 90 percent of their wage scale.

3 Q. 149 But I don't believe that gets to the
4 question I asked you, Mr. Thomas. Let me see if
5 I can rephrase it to make it clearer, and I'm not
6 saying that you're refusing to answer my question.
7 I probably didn't make it clear. I believe we've
8 already gone over the area that the type of work
9 that Mr. Lequire's company was performing was not
10 work covered by the union contract. Have we not
11 agreed on that earlier?

12 A. Well, I don't know if it was work
13 covered by the agreement or not.

14 Q. 150 Now, so, in fact, the outage would
15 have nothing to do with Mr. Lequire's company,
16 would it?

17 A. I agreed earlier that--that Mr.
18 Lequire's work could go on independently of the
19 unit outages, yes, but I--I do not make any
20 determination of whether or not that is something
21 that should be covered by building and trades
22 union.

23 Q. 151 Now, we mentioned, I believe, that
24 other contractors were used in connection with
25 cleaning those ponds. During outages did you make

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 them stop working?

2 A. I don't recall any--any situations

3 where buildings and trade--the union brought an

4 issue up with any other contractor.

5 Q. 152 And, in fact, other contractors

6 worked through outages cleaning those ponds,

7 didn't they?

8 A. They very likely could have, yeah.

9 Q. 153 You don't deny that, do you?

10 A. I do not deny it.

11 Q. 154 In fact, Trans-Ash did that, didn't

12 they?

13 A. Highly likely.

14 Q. 155 Now, getting back again, is it not

15 true that as a precursor or before the problems

16 where you gave Mr. Lequire these alternatives,

17 that a conversation took place in regard to the

18 use of Davis and Burton trucks?

19 A. I wasn't involved in a conversation

20 regarding use of Davis and Burton.

21 Q. 156 Mr. Lequire never had a conversation

22 with you in regard to the use of Davis and Burton

23 trucks?

24 A. I don't recall any--any conversation

25 about any specific trucking company.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE
Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Q. 157 Nor do you recall any conversation
2 where Mr. Lequire complained that Davis and
3 Burton's costs were twice what other trucking
4 companies were and that he could not afford to use
5 Davis and Burton Trucking?

6 A. I don't recall that.

7 Q. 158 At some point was there a
8 determination made that it was necessary to dredge
9 material out of the north pond?

10 A. I wasn't involved so much with the
11 details on that, so it possibly could have been,
12 yes.

13 Q. 159 Could that have happened?

14 A. Could it have happened? Yes.

15 Q. 160 Let me show you a letter here and
16 ask you if you became aware of that proposal.

17 A. Yes.

18 Q. 161 What was that a proposal to do?

19 A. The stand pipes--I'm not sure if
20 that term was ever introduced to you or not--but
21 the stand pipes which is part of the de-watering
22 system for the ponds had some material around it
23 that was--we were unable to get to from our normal
24 ash removal operation, and this--we asked Mr.
25 Lequire's company to use their long stick backhoe

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 to remove some of that material. That's just what
2 I recall this is.

3 Q. 162 And I do happen to be familiar with
4 stand pipes because of coal mine settling ponds.
5 But is it not true that this material that was
6 proposed to be removed was in the north pond?

7 A. It could have been. I--

8 Q. 163 That would be a true statement?

9 A. Yeah, it could have been in the
10 north pond.

11 Q. 164 And that would have been in addition
12 to the B-8511 service order or contract, would it
13 not?

14 MR. ROBERTS: In its original form?
15 Is that your question?

16 MR. MAY: In its revised form.

17 A. And its revised form being what?

18 Q. 165 As I understand it, and, again, you
19 correct me if I'm wrong, Mr. Thomas, because I'm
20 not trying to mislead anyone. As I understand it,
21 the B8-511 contract was revised to account for the
22 material that had washed down into the settling
23 ponds that Mr. Lequire had originally contracted
24 to remove. Is that not true?

25 A. And the revised--I believe that to

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 be true as a result of these documents that you've
2 entered into evidence.

3 Q. 166 And, in fact, since we already have,
4 I think, established that this material that we're
5 talking about in this proposal which you are now
6 looking at, involved the removal of material up in
7 the north pond rather than the settling ponds?

8 MR. ROBERTS: Objection to the
9 characterization. I think he agreed with you that
10 that was possible; I'm not sure he indicated he
11 knew that one way or the other.

12 A. I wasn't involved so much with the
13 details of the--of where things were, and I
14 believe that it could have been the north pond
15 through these things, you know--

16 MR. MAY: Let us introduce this as
17 Exhibit Seven, the May 25.

18 Q. 167 And, in fact, I'll present you
19 another document which is characterized as Service
20 Order Number A22006, and ask you if that was not
21 a service order in connection with the removal of
22 this material from the north pond?

23 A. I believe that it probably is. I'm
24 not certain because of all the things that's gone
25 on with a lot of this building, but I believe--and

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 the dates for this versus the dates for the
2 documents that you've presented here--

3 Q. 168 And, again, this work would have
4 nothing to do with the B8511 contract, would it?

5 A. Not necessarily, but typically what
6 happens whenever you run into a situation with
7 this--like this, like the removal--like the extra
8 work that we did with the--using the backhoe in
9 various places, we'll do like what we call extras.
10 A contractor will submit a bid. Typically, one--
11 it's a whole lot easier to get one that's already
12 mobilized and there and he'll have extras. Okay?
13 And the situation I think that happened with this
14 was, the folks were coming up pretty close to the
15 money that had been approved on the B service
16 order, the revised B service order that you
17 alluded to, and they felt that some of the work--
18 some additional monies needed to be approved for--
19 just to cover the cost just in case it did go
20 over.

21 Q. 169 But if I look at Exhibit Seven,
22 which is a proposal by Mr. Lequire which we've
23 already discussed, I assume there must have been
24 some request for bids on another project and then
25 a contract or a service order was entered into in

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 regard to that proposed bid.

2 A. I believe that Mr. Lequire was paid

3 for this work that he did on this one, on the

4 service order B8511 through invoices that he

5 submitted.

6 Q. 170 Then would you explain to me why

7 this agreement or contract was entered into and

8 what was it for?

9 A. Again, as I explained earlier, I

10 think that because of the concerns for not really

11 knowing where they were in this contract, I think

12 it was for--they had established money up to

13 \$150,000.00, as I recall. There was some concerns

14 about not knowing where they were, that they were

15 going to exceed that \$150,000.00, so they asked

16 for these additional monies. And, again, the

17 details around it are fuzzy with me right now, but

18 that's what I recall, is that they asked for the

19 additional monies so that the original contract,

20 if it were to be exceeded, that they would have

21 enough money to cover it.

22 Q. 171 But the original contract involved

23 materials in the lower settling ponds. This

24 contract involves materials in the north pond,

25 doesn't it?

1 A. Uh-huh. As I indicated to you
2 earlier, I believe that invoices submitted to
3 remove that material were in the north pond were
4 submitted under the B8511 contract, when they
5 actually probably--maybe should have been
6 submitted under that one. At either rate, they
7 were not submitted under the A contract.

8 Q. 172 And I guess I'm having difficulty
9 understanding that, Mr. Thomas. You'll have to
10 excuse my lack of understanding.

11 A. I'll have to admit that I have
12 difficulty understanding this whole--this whole
13 thing right here from the beginning to the ending.
14 I--I believe that the work that was done, that
15 that was initially intended to cover--was paid for
16 under the B8511 contract.

17 Q. 173 So this work was going to be done
18 but it was really going to be paid for under the
19 B11--

20 A. Should not have been paid for under
21 the B11, but I believe that it was.

22 Q. 174 But this was additional work. Is
23 that not true?

24 A. Yeah.

25 Q. 175 So it should not have been

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 subtracted from the B8511 contract, should it?

2 A. It wasn't subtracted from it. It
3 was paid for under it.

4 Q. 176 May I show you an invoice to show
5 where it was subtracted? Well, since we can't
6 find it--if, in fact, that did happen--if that
7 happened, that shouldn't have been done. Would
8 that be a true statement?

9 A. It--if it affected the survey--the
10 before and after survey, it should not have been
11 done. The B8511 contract, I believe, was for
12 considerably more per yard than this A service
13 order was set up for. I think this was set up
14 for--the document that you showed me earlier was
15 for \$3.00 a ton, and the B8511 contract was set up
16 for more than that. I don't recall exactly, but
17 it was--

18 Q. 177 But if I may wade through all of
19 this and get down to the crux of the question that
20 I'm asking you, Mr. Thomas, the B5811 or 8511,
21 whatever it is, as revised, constituted removal of
22 material in the lower settling ponds. Is that not
23 right?

24 A. I believe that would be correct,
25 yes.

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)

1 Q. 178 And so the monies paid in that
2 connection with that contract were in regard to
3 removal of materials in the lower settling ponds?

4 A. Monies that should have been paid
5 for that were--were--should have been connected to
6 that. Now, whether or not all the monies that
7 paid out was connected to the lower settling
8 ponds, I'm not sure about.

9 Q. 179 And I think we've established, and
10 maybe we haven't, that this service order Number
11 A2206 involved removal of materials from the north
12 pond?

13 A. I believe that's the truth, yes. I
14 believe that's a fact.

15 Q. 180 So that should have been paid in
16 addition to the--for the removal of materials in
17 the settling ponds?

18 A. I believe that it was paid as an
19 extra under the B8511, and was paid in addition to
20 the removal of stuff in the other ponds.

21 MR. MAY: I believe I'm going to give
22 up on it. All right. May we introduce this as
23 Exhibit Number Eight. Let's take a little break
24 here. I'm getting dry here from talking so much.

25 (SHORT BREAK) .

1 MR. MAY: Mr. Thomas, I believe I
2 have no further questions of you at this time.
3 Thank you very much, sir.

4 A. Okay.

5
6
7
8 (TESTIMONY CONCLUDED) .
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

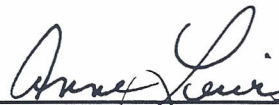
STATE OF KENTUCKY)

COUNTY OF JOHNSON)

I, ANNE LEWIS, Notary Public, in and for the State of Kentucky at Large, whose commission as such will expire on April 5, 2000, do hereby certify that the foregoing DISCOVERY DEPOSITION ON BEHALF OF PLAINTIFF, OF THE WITNESS, MITCH THOMAS, was taken before me at the time and place as stated in the caption hereto, on Page One hereof.

I further certify that said taking was by Notice, that the witness was duly sworn by me before testifying, that said testimony was taken by me in stenographic notes in the presence of the witness, and was later reduced herein, and is a true, full, complete and accurate transcript thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Paintsville, Kentucky, on this the 23rd day of August, 1999.



NOTARY PUBLIC, IN AND FOR THE
STATE OF KENTUCKY AT LARGE

SISTERS' REPORTING/VIDEOGRAPHY SERVICE

Anne Lewis/Lisa Lewis Conley
(606)789-4790 (Paintsville)
(606)245-1173 (Lexington)